IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 363 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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DAHYABHAI KALUBHAI - Appellant(s)
Versus
M/S KADI CHILLING & 5 - Opponent(s)

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Appearance :
MR ND GOHIL for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,3 - 4.
MR PRAKASH K JANI for Opponent(s) : 2, 5,
MR MEHUL SHARAD SHAH for Opponent(s) : 2, 5,
MS DS PANDIT, LD.APP for Opponent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 09/03/2007

ORAL JUDGMENT

1. The present appellant-orig. complainant (hereinafter referred to as 'the appellant') has preferred the present appeal against the judgment and order of acquittal dated 27th July, 1993, passed by the learned Judicial

Magistrate First Class, Kadi, in Criminal Case No.33 of 1987, whereby the learned trial Judge has acquitted the respondents-accused of all the charges levelled against them in respect of the offence in question. The Criminal Case came to be filed against the respondent nos.1 to 5 herein on the private complaint filed by the present appellant of Gujarat State Pollution Control Board, Ahmedabad (hereinafter referred to as 'the Board'), alleging commission of the offence by the respondent nos.1 to 5 herein named in the complaint under Section 44 of the Water (Prevention and Control of Pollution) Act, 1974.

2. At the conclusion of the trial on evaluation of the oral as well as documentary evidence, the learned Judicial Magistrate First Class decided to acquit the orig.accused persons for the reasons assigned in the judgment and order under challenge in this appeal. The appellant being aggrieved by the same, sought for leave

to appeal under Section 378(4) of the Code of Criminal Procedure, 1973, and on granting the said leave, the present appeal came to be filed. Shri N.D. Gohil, learned counsel appearing for the appellant-orig. complainant and mainly representing the Board, has taken me through the basic allegations made in the complaint and the judgment and order of acquittal in the background of the case placed before the Court in the memo of the appeal. The Court is informed that total five persons were joined as the accused persons; out of which three accused persons i.e. orig.accused no.2-Shri Motibhai, orig.accused no.3-Shri Babubhai and orig.accused no.4-Shri B.M. Patel, have expired. A formal death certificate could have been produced but there is no serious challenge about the death of these three persons being known persons in the cooperative sector in the North Gujarat region and mainly District Mehsana. So obviously, the appeal would stand abated qua the orig.accused nos.2, 3 and 4. The orig.accused no.5 has

retired from his service. But the Court cannot consider the fact of retirement because it is not a matter of dispute that at the relevant point of time when the sample of polluted water was drawn by the Board, he was with the orig.accused no.1 i.e. M/s. Kadi Chilling Centre, which is a cooperative society basically working under Mehsana District Cooperative Milk Producers Union Ltd. The Court at present is not concerned whether the accused no.1-Cooperative Society had its own legal status or not. Therefore, the same has been prosecuted in the name and style of the Society i.e. M/s.Kadi Chilling Centre at Kadi.

3. To appreciate the say of the complainant, firstly, the Court would like to mention the basic allegations made in the complaint. It is alleged that the orig.accused no.1-Society was warned for discharging polluted water. The Board had granted permission to the orig.accused no.1 to discharge the polluted water keeping certain parametres in mind and

it was also directed that the Society shall divert the discharged water so that the same can be utilized for the purpose of agriculture. It is alleged that the accused had failed in keeping the said parametres. For that purpose, they ought to have activated water affluent plant and it is also alleged that instead of using water for the purpose of agriculture, the orig.accused no.1 society was accumulating that polluted water in a ditch adjacent to the premises used for chilling milk.

4. While recording the acquittal of accused persons, the learned trial Judge has observed that none of the accused persons could have been prosecuted without any valid sanction and only the Board was authorized to accord such sanction to prosecute. The sanction produced by the prosecution in the present case simply refers to the name of accused no.1. All the papers seeking sanction must have been produced before the sanctioning authority so

that it can reasonably be inferred that the names of all the accused persons must have been there in those papers, then even the authority has not granted sanction to prosecute the accused no.5 i.e. Madhubhai Chaudhari. The prosecution, therefore, would not sustain for want of sanction, which is a legal requirement. The learned trial Judge could not have convicted the accused even on proof of all the allegations made in the complaint. So it is difficult for this Court to reverse the finding of acquittal of accused no.5-Madhubhai Chaudhari.

5. So far as the reasons assigned by the learned Judicial Magistrate First Class, Kadi, for recording the acquittal of accused no.1 are concerned, they also sound good. There is not only logic but the reasons assigned by the learned trial Judge are supported by relevant law and on plain reading of the judgment, it is clear that certain mandatory provisions were not observed while drawing and analyzing

the sample drawn on the day on which the sample was collected in a carboy (plastic container) on 21st March, 1986. When the officers of the Board visited the Cooperative Society for the purpose of taking sample so that the same can be sent for analysis, one Shri M.C. Desai was present. He is not named as an accused. Whether he was authorized to accept the notice or written intimation, was a question. In the same way, there is clear conflict in the evidence as to adding of preservative in the water sample collected in the carboy. One witness has stated in his evidence that the preservative was added at Ahmedabad and, thereafter, the sample was sent for analysis. There is no evidence that the preservative was added at the time of collecting the sample. According to the officer, who has analyzed the sample, the same was received intact in a sealed condition. The learned trial Judge has rightly discussed this part of evidence and has considered the shadow of doubt posing a question as to whether the

sample of water drawn for analysis was kept intact till it was sent for analysis to the laboratory or it was opened once at Ahmedabad in its office ? The prosecution has found certain excess percentage of affluents in the water. In such a situation, adding of preservative appears to be a basic requirement. In the same way, the learned trial Judge has also observed that the story told by the prosecution witnesses is that the sample was kept in the ice or icebox, is also doubtful. The learned trial Judge has drawn one inference that the laboratory must have analyzed the sample on different days because it was tested to ascertain the presence of different type of chemicals or affluents. There is nothing on record to show that the entire analysis was carried out on one single day. So during this period, how the carboy was kept preserved intact, is a question and the same has not been answered by the prosecution satisfactorily. If no authorized person was present at the time of drawing of sample, the

procedure prescribed under the Rules ought to have been followed and the sample could have been drawn recording the absence of the authorized person and the signature of an independent person could have been taken.

6. The reasons recorded by the learned Magistrate are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of ***Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204,*** has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is possible. In the same way, the observations of the Apex Court in the case of ***Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,*** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow unless the order is absolutely illegal and perverse.

In view of the ratio of the above cited decisions also, there is no merit in the present appeal and the same is required to be dismissed.

7. In view of above observations and discussion, the present appeal is hereby dismissed. The judgment and order of acquittal dated 27th July, 1993, passed by the learned Judicial Magistrate First Class, Kadi, in Criminal Case No.33 of 1987, is hereby confirmed. The bail bonds, if any, executed by the accused persons, shall stand discharged.

8. It is clarified that though this appeal is listed with Criminal Appeal No.370 of 1995 as similar points are involved, but there are different facts and the allegation against the accused persons of both the appeals are required to be decided separately and, therefore, the present appeal is decided as separate appeal.

(C.K. Buch, J)

Aakar